

**REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed July 11, 2006. In the Office Action Claims 1-39 are pending. The Examiner rejects Claims 1-13 and 15-39 and objects to Claim 14. Claims 6-11, 14, 26-31, and 36-39 have been amended. Applicants submit that no new matter has been added by these amendments. Applicants respectfully request reconsideration and favorable action in this case.

**Allowable Subject Matter**

Applicants also note with appreciation the Examiner's indication that Claim 14 would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. However, as discussed below, Applicants believe that independent Claim 11 (from which Claim 14 depends) is also allowable. Therefore, Applicants have not amended Claim 14.

**Claim Objections**

The Examiner objects to Claims 8 and 14 due to informalities. Applicants have amended Claims 8 and 14 to correct the informalities identified by the Examiner. Applicants respectfully request that the objection to Claims 8 and 14 be withdrawn.

**Section 103 Rejections**

The Examiner rejects Claims 1-13 and 15-39 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of U.S. Patent Application Publication No. 2003/0061319 issued to Manzardo ("*Manzardo*") and U.S. Patent No. 6,912,276 issued to Olafsson et al. ("*Olafsson*"), U.S. Patent No. 6,853,714 issued to Liljestrand et al. ("*Liljestrand*"), U.S. Patent No. 6,785,223 issued to Korpi et al. ("*Korpi*"), and U.S. Patent No. 7,023,876 issued to Berry et al. ("*Berry*").

**A. The Claims are Allowable over the cited References**

Because the proposed combinations do not disclose, teach, or suggest each and every feature of Applicants' claims, Applicants respectfully traverse the rejection of the claims and request reconsideration and favorable action.

**1. Claims 1-5, 16-25, and 32-35**

Independent Claim 1, which has been rejected over the *Manzardo-Olafsson* combination, recites:

A method for recovering a communication session after failure of an endpoint, comprising:  
    establishing a communication session between a first endpoint and a second endpoint;  
    receiving keep alive signals from the first endpoint;  
    detecting an interruption in the keep alive signals;  
    maintaining a connection with the second endpoint after the interruption; and  
    reestablishing the communication session between the first endpoint and the second endpoint if the keep alive signals resume within a predetermined time period.

Whether considered alone or in combination, neither *Manzardo* nor *Olafsson* disclose, either expressly or inherently, each and every element of independent Claim 1.

For example, Applicants respectfully submit that the proposed *Manzardo-Olafsson* combination does not disclose, teach, or suggest "reestablishing the communication session between the first endpoint and the second endpoint if the keep alive signals resume within a predetermined time period," as recited in Claim 1. In the Office Action, the Examiner acknowledges that the recited features and operations are absent from *Manzardo* and instead relies upon *Olafsson*. Applicants respectfully submit, however, that *Olafsson* also does not disclose the recited features and operations. As cited by the Examiner, *Olafsson* discloses:

In one embodiment, the keep alive functionality 323 within the ISP modem 321 transmits "keep alive" packet streams to the higher TCP/IP protocol layer after the modem signal is interrupted . . . [T]he ISP modem uses the keep alive whenever it is having difficulty reaching the client modem 301 for whatever reason. The stream is used for a predetermined period to allow reestablishment of the link during a period that far exceeds a traditional session termination period.

(Column 8, line 65 through Column 9, line 1 and Column 9, lines 6-12). Thus, the “keep alive signals” disclosed in *Olafsson* are transmitted after the modem signal is interrupted and continue for a predetermined period of time until reestablishment of the link can be effected. *Olafsson* does not disclose, teach, or suggest “reestablishing the communication session between the first endpoint and the second endpoint if the keep alive signals resume within a predetermined time period,” as recited in Claim 1. In fact, *Olafsson* operates in an entirely contrary manner to Applicants recited claim language.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 1, together with Claims 2-5 that depend from Claim 1.

Independent Claims 16 and 32 include certain features and operations that are analogous to the features and operations recited in Claim 1. For example, Claim 16 recites “a processor operable to . . . reestablish the communication session if the keep alive signals resume within a predetermined time period.” As a further example, Claim 32 recites “reestablishing the communication session between the first endpoint and the second endpoint if the keep alive signals resume within a predetermined time period.” Accordingly, for reasons analogous to those discussed above with regard to Claim 1, Applicants submit that the proposed *Manzardo-Olafsson* combination does not disclose, teach, or suggest the features of independent Claims 16 and 32.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 16 and 32, together with Claims 17-25 and 33-35 that depend from Claims 16 and 32, respectively.

## **2. Claims 6-10, 26-31, and 36-39**

Independent Claim 6, which has been rejected over the *Manzardo-Olafsson* combination, recites:

A method for recovering a communication session after failure of an endpoint, comprising:  
    establishing a communication session between a first user endpoint and a second user endpoint;  
    receiving keep alive signals from the first user endpoint;  
    detecting an interruption in the keep alive signals from the first user endpoint;  
    maintaining a connection with the second user endpoint after the interruption; and  
    transferring the communication session with the second user endpoint from the first user endpoint to a third user endpoint.

Whether considered alone or in combination, neither *Manzardo* nor *Olafsson* disclose, either expressly or inherently, each and every element of independent Claim 6.

For example, Applicants respectfully submit that the proposed *Manzardo-Olafsson* combination does not disclose, teach, or suggest “receiving keep alive signals from the first user endpoint” and “detecting an interruption in the keep alive signals from the first user endpoint,” as recited in Claim 6. In the Office Action, the Examiner specifically relies upon *Manzardo* for the recited features and operations. Applicants respectfully submit, however, that *Manzardo* does not disclose the recited features and operations. Although *Manzardo* discloses that a “main server 102 may facilitate or otherwise support voice, data, and other connections or communications between telephones, modems, and devices that travel at least in part over the IP network 106,” the system of *Manzardo* includes a “stand-by server 104 [that] may act as a back-up to the main server 102 such that the stand-by server facilitates communications when the main server 102 is unavailable or unable to do so.” (Page 3, paragraph 29, lines 12-16 and 19-22). Accordingly, *Manzardo* discloses:

During a step 204, the main server 102 provides or at least initiates at least one signal that is provided or sent directly or indirectly to the stand-by server 104, referred to herein as a “keep alive” signal, that indicates that the main server 102 is operational, available, or otherwise providing support for calls . . .

. . . So long as the stand-by server 104 receives at least one keep alive signal initiated by the main server 102, the stand-by server 104 does not provide support for the calls currently being handled or facilitated by the main server 102.

. . . Thus, the stand-by server 104 may not initiate witch over from the main server 102 or support for calls handled by the man server 102 unless the stand-by server 104 fails to receive on or more of the keep alive signals or detects that one or more of the keep alive signals have not been received.

(Page 5, paragraph 45, lines 1-6; Page 5, paragraph 47, lines 4-7; Page 5, paragraph 49, liens 3-8). Thus, the “keep alive signals” disclosed in *Manzardo* are initiated by the main server and are transmitted to the stand-by server to indicate that the main server is operational. Accordingly, Applicants respectfully submit that *Manzardo* and, thus, the *Manzardo-Olafsson* combination does not disclose, teach, or suggest “receiving keep alive signals from the first user endpoint” and “detecting an interruption in the keep alive signals from the first user endpoint,” as recited in Claim 6.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 6, together with Claims 7-10 that depend from Claim 6.

Independent Claims 26, 36, and 39 include certain features and operations that are analogous to the features and operations recited in Claim 6. For example, Claim 26 recites “a processor operable to . . . detect an interruption in the keep alive signals from the first user endpoint” and “maintain a connection with the second user endpoint after the interruption.” As a further example, Claim 36 recites “receiving keep alive signals from the first user endpoint” and “detecting an interruption in the keep alive signals from the first user endpoint.” As still another example, Claim 39 recites “means for receiving keep alive signals from the first user endpoint” and “means for detecting an interruption in the keep alive signals from the first user endpoint.” Accordingly, for reasons analogous to those discussed above with regard to Claim 6, Applicants submit that the proposed *Manzardo-Olafsson* combination does not disclose, teach, or suggest the features of independent Claims 26, 36, and 39.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 26, 36, and 39, together with Claims 27-31 and 37-38 that depend from Claims 26 and 36, respectively.

**3. Claims 11-15**

Independent Claim 11, which has been rejected over the *Manzardo-Berry* combination, recites:

A method for reestablishing a communication session, comprising:  
establishing a communication session between a first endpoint and  
a second endpoint;  
receiving from a user of the first endpoint a user-generated  
message to reestablish the communication session; and  
in response to the user-generated message, reestablishing the  
communication session between the second endpoint and the user of the  
first endpoint.

Whether considered alone or in combination, neither *Manzardo* nor *Berry* disclose, either expressly or inherently, each and every element of independent Claim 11.

For example, Applicants respectfully submit that the proposed *Manzardo-Berry* combination does not disclose, teach, or suggest “receiving from a user of the first endpoint a user-generated message to reestablish the communication session,” as recited in Claim 1. In the Office Action, the Examiner acknowledges that the recited features and operations are absent from *Manzardo* and instead relies upon *Berry*. Applicants respectfully submit, however, that *Berry* also does not disclose the recited features and operations. As cited by the Examiner, *Berry* discloses that “the state machine 401 provides a set response mode message to the protocol layer 103 that causes the protocol layers 102 and 103 to begin the initialization process and re-negotiate the exchange rate and re-establish the connection.” (Column 9, lines 35-39). The Examiner also notes that *Berry* discloses that “state machine 401 provides a synchronization request message to re-establish the connection and/or renegotiate the exchange rate.” (Column 13, lines 51-53). Thus, the relied upon portions of *Berry* merely disclose that a state machine 401 initiates various messages during the negotiation of an exchange rate and the (re)establishment of a connection. (Abstract). There is no disclosure in *Berry* of “receiving from a user of the first endpoint a user-generated message to reestablish the communication session,” as recited in Claim 1. For analogous reasons, Applicants further submit that there also can be disclosure, suggestion, or teaching in *Berry* of “in response to the user-generated message, reestablishing the communication session between the second endpoint and the user of the first endpoint,” as also recited in Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 11, together with Claims 12-15 that depend from Claim 11.

**B. The Proposed *Manzardo-Olafsson* and *Manzardo-Berry* Combinations are Improper**

Furthermore, Applicants respectfully submit that the Examiner has not provided the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to modify or combine *Manzardo* with *Olafsson* and/or *Berry* in the manner the Examiner proposes. Applicants' claims are allowable for at least this additional reason.

**1. The Legal Standard**

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. Accordingly, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed above, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention. It is clear based at least on the many distinctions discussed above that the proposed *Manzardo-Olafsson* and *Manzardo-Berry* combinations do not, taken as a whole, suggest the claimed invention, taken as a whole. Applicants respectfully submit that the Examiner has merely pieced together disjointed portions of references, with the benefit of hindsight using Applicants' claims as a blueprint, in an attempt to reconstruct Applicants' claims.

The governing Federal Circuit case law makes this strict legal standard clear.<sup>1</sup> According to the Federal Circuit, "a showing of a suggestion, teaching, or motivation to combine or modify prior art references is an essential component of an obviousness holding." *In*

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<sup>1</sup> Note M.P.E.P. 2145 X.C. ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

*re Sang-Su Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000)). “Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved.” *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). However, the “range of sources available . . . does not diminish the requirement for actual evidence.” *Id.* ***Although a prior art device “may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.”*** *In re Mills*, 916 F.2d at 682, 16 U.S.P.Q.2d at 1432 (emphasis added). *See also In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (***holding a prima facie case of obviousness not made where the combination of the references taught every element of the claimed invention but did not provide a motivation to combine***); *In Re Jones*, 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1944 (Fed. Cir. 1992) (“Conspicuously missing from this record is any evidence, other than the PTO’s speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at” the claimed invention.). Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try the proposed modification or combination is not sufficient to establish a *prima facie* case of obviousness. *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

In addition, the M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, ***“The tendency to resort to 'hindsight' based upon applicant’s disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”*** M.P.E.P. § 2142 (emphasis added). The governing Federal Circuit cases are equally clear. “A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood



may prompt one 'to fall victim to the insidious effect of a hindsight syndrome *wherein that which only the invention taught is used against its teacher.*'” *In re Kotzab*, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted; emphasis added). In *In re Kotzab*, the court noted that to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. *See id.* *See also, e.g., Grain Processing Corp. v. American Maize-Products*, 840 F.2d 902, 907, 5 U.S.P.Q.2d 1788, 1792 (Fed. Cir. 1988). Similarly, in *In re Dembiczak*, the Federal Circuit reversed a finding of obviousness by the Board, *explaining that the required evidence of such a teaching, suggestion, or motivation is essential to avoid impermissible hindsight reconstruction of an applicant's invention:*

Our case law makes clear that the best defense against the subtle but powerful attraction of hind-sight obviousness analysis is *rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.* Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.

175 F.3d at 999, 50 U.S.P.Q.2d at 1617 (emphasis added) (citations omitted; emphasis added).

## 2. The Analysis

With regard to Claims 1, 16, and 32, the Examiner states that “one skilled in the art would have recognized the maintaining a connection with the second endpoint after the interruption; and reestablishing the communication session between the first endpoint and the second endpoint if the keep alive signals resume within a predetermined time period, and would have applied *Olafsson et al.*'s keep alive functionality to maintain continuous data session in *Manzardo's* establishing a communication session.” (Office Action, pages 4, 7, and ). The purported motivation provided by the Examiner is “to prevent the session from terminating.” (Office Action, pages 4, 7, and 10-11). The Examiner makes similar statements with regard to Claims 6, 26, 36, and 39. With regard to Claim 11, the Examiner states that “[o]ne skilled in the art would have recognized the receiving from a user of the first endpoint a message to reestablish the communication session, and in response to the message, reestablishing the communication session between the second endpoint and the user of the first endpoint, and would have applied *Berry et al.*'s re-establish the connection in *Manzardo's* establishing a

communication session.” (Office Action, page 18). The purported motivation provided by the Examiner is “to re-establish the connection.” (Office Action, page 18).

It appears that the Examiner has merely proposed alleged advantages of combining *Manzardo* with *Olafsson* and *Berry*, respectively (advantages which Applicants do not admit could even be achieved by combining these references in the manner the Examiner proposes). While the Examiner has cited a portions of *Olafsson* and *Berry* that tout an advantage of their respective systems, the Examiner has not pointed to any portions of the cited references that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to incorporate the standby-server functionality disclosed in *Manzardo* with the call-waiting services disclosed in *Olafsson* and/or the exchange rate re-negotiation functionality of *Berry*. In other words, the alleged advantage of the systems disclosed in *Olafsson* and *Berry* do not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicants' invention (*without using Applicants' claims as a guide*) to modify the cited disclosure in *Manzardo* to include the particular techniques disclosed in *Olafsson* and *Berry*; (2) how one of ordinary skill in the art at the time of Applicants' invention would have actually done so; and (3) how doing so would purportedly meet the limitations of Applicants' claims. Indeed, if it were sufficient for Examiners to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine or modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear and as discussed above, that is not the law.

Furthermore, it certainly would not have been obvious to one of ordinary skill in the art at the time of invention *to even attempt* to, let alone *to actually*, modify or combine the standby-server functionality disclosed in *Manzardo* with the call-waiting services disclosed in *Olafsson* and/or the exchange rate re-negotiation functionality of *Berry*.<sup>2</sup> In the Office Action, the Examiner has stated that *Olafsson* and *Berry* are analogous art. As described above,

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<sup>2</sup> If “common knowledge” or “well known” art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

however, *Manzardo* relates to a system providing switch over “from a main server to a stand-by server for supporting or facilitating calls having traffic routed across an IP network when the main server is disrupted or becomes unavailable.” (*Manzardo*, Abstract). By contrast, *Olafsson* relates to a system providing call waiting services so that additional incoming calls may be received or initiated. (*Olafsson*, Abstract). And, *Berry* relates to an application program for “request[ing] renegotiation of an exchange rate at any time.” (*Berry*, Abstract). Aside from relating very generally to communication services, Applicants find no reason in *Manzardo*, *Olafsson*, or *Berry* as to why one of ordinary skill in the art would be motivated to combine these seemingly unrelated references in the manner proposed by the Examiner for the reasons proposed by the Examiner. One of ordinary skill in the art at the time of Applicants’ invention would have considered the references as relating to different fields of invention and would not have made the proposed combination. Applicants respectfully submit that a rejection of Applicants’ claims under the proposed *Manzardo-Olafsson* and *Manzardo-Berry* combinations, in the manner provided by the Examiner, can only result from the piecing together of disjointed portions of unrelated references to reconstruct Applicants’ claims. Accordingly, Applicants respectfully submit that the Examiner’s attempt to modify or combine the proposed references appears to constitute the type of impermissible hindsight reconstruction of Applicants’ claims, using Applicants’ claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the prior art fails to provide the required teaching, suggestion, or motivation to combine *Manzardo* with *Olafsson* and/or *Berry* in the manner the Examiner proposes, Applicants respectfully submits that the Examiner’s conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicants respectfully submit that the rejection must therefore be withdrawn.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 1-13 and 15-39.

**CONCLUSION**

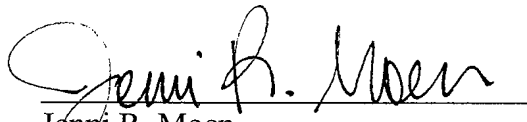
Applicants have made an earnest attempt to place this application in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this application in any manner, the Examiner is invited to contact Jenni R. Moen, Attorneys for Applicants, at the Examiner's convenience at (214) 953-6809.

Applicants believe that no fees are due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,

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